

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

STENIO DESOUZA, and)	
RAQUEL DESOUZA,)	Civil Action No: 05-787
)	
Plaintiffs,)	
)	
v.)	JURY TRIAL DEMANDED
)	
PETTINARO CONSTRUCTION, CO.,)	
INC, et al.,)	
)	
Defendants.)	

MOTION TO DISMISS

Defendant, U.S. CONSTRUCTION, INC., owned by ANTONIO RODRIGUES, and referred to in the Complaint as follows: U.S. Construction, Inc. a/k/a/p/f/d/b/a U.S. Construction, and/or U.S. Construction, LLC and U.S. Construction and Jose H. Rodrigues a/p/f/k/a Jose G. Rodrigues, and/or Jose Rodriguez and/or Jose M. Rodriguez and/or Gose Rodrigues, and/or Jose Henrique Rodrigues and Jose G. Rodrigues and Jose Henrique Pereira Rodrigues and Jose Rodriguez and Jose M. Rodrigues and Gose Rodrigues and Nino Rodrigues a/p/f/k/a Antonio G. Rodrigues and/or Antonio O. Rodrigues and/or Antonio Rodrigues and Antonio G. Rodrigues and Antonio O. Rodrigues and Antonio Rodrigues (hereinafter referred to as "U. S. Construction, Inc.") respectfully request this Court dismiss Plaintiffs' Complaint with prejudice for the following reasons:

1. Defendant, U.S. Construction, Inc., owned by Antonio Rodrigues, affirms through his attached Affidavit that neither he nor any agent or servant of U.S. Construction, Inc. has ever conducted business or otherwise been present within the state of Delaware.

Therefore, this Court lacks personal jurisdiction over the above named defendants and/or any of its agents, servants and/or employees. Defendant, U.S. Construction, Inc. respectfully requests that this Court dismiss Plaintiffs' case against Defendant U.S. Construction, Inc. for lack of personal jurisdiction pursuant to rule Fed. R. Civ. P. 12 (b) (2).

2. Plaintiffs failed to allege sufficient facts to suggest U. S. Construction, Inc., or any of its agents, servants and/or employees were present at the Rockwood Apartments located at 100 Cindy Drive, Newark, Delaware 19702, the site at which Plaintiff, Stenio Desouza's alleged injuries occurred on November 17, 2006.

3. Plaintiffs failed to offer more than mere conjecture or speculation that any type of agency, contractual or partnership relationship existed between Defendant, U.S. Construction, Inc. and/or any agent or servant of same and any other Defendant named or otherwise.

4. Plaintiffs have pleaded no facts and offered no basis in support of aforementioned allegations sufficient to allow Defendant U.S. Construction, Inc. to otherwise respond to said allegations.

5. Plaintiffs have acknowledged that Defendant, U.S. Construction, Inc. did not employ Plaintiff, Stenio Desouza, at any time. Plaintiffs have failed to plead facts that will meet their Prima facie burden of establishing that Defendant, U.S. Construction, Inc. owed Plaintiff, Stenio Desouza a duty, that that duty was breached and that the breach resulted in injury to Plaintiff, Stenio DeSouza. Defendant, U.S. Construction, Inc. respectfully requests that this Court dismiss Plaintiffs' case pursuant to Fed. R. Civ. P. 12 (b) (6).

WHEREFORE, Defendant respectfully requests that this Court dismiss the Plaintiffs' case as it pertains to above named Defendant, U.S. Construction, Inc. with prejudice.

MARGOLIS EDELSTEIN

A handwritten signature in black ink, appearing to read 'Jeffrey K. Martin', is written over a horizontal line.

Jeffrey K. Martin, Esquire (#2407)
1509 Gilpin Avenue
Wilmington, Delaware 19806
(302) 777-4680 phone
(302) 777-4682 facsimile
jmartin@margolisedelstein.com
Attorneys for Defendant, U.S. Construction,
Inc.

Dated: October 6, 2006